IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6263 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SADARUSING KARTARSING SANDHU

Versus

COMMISSIONER OF POLICE

Appearance:

1. Special Civil Application No. 6263 of 2001

MR PRAVIN GONDALIYA for Petitioner No. 1

MR DP JOSHI, AGP, for Respondents No. 1-3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 07/01/2002

ORAL JUDGEMENT

1. Commissioner of Police, Baroda City, Baroda, passed an order on July 9, 2001, in exercise of powers under Section 3(1) of the Gujarat Prevention of Anti-Social Activities Act, 1985 ("PASA Act" for short), detaining the petitioner under the provisions of the said

Act.

2. The detaining authority took into consideration four offences registered against the petitioner, so also the statements of three anonymous witnesses. The detaining authority considered the activities of the detenu as that of a bootlegger and observed that the petitioner is required to be immediately prevented from pursuing his activities, which are detrimental to public order. The authority also considered the possibility of resorting to less drastic remedies and came to conclusion that detention under PASA Act is the only remedy that can be resorted to.

3. The petitioner challenges the order of detention on various grounds. Mr. Gondaliya, learned advocate appearing for the petitioner, contended that the subjective satisfaction recorded by the detaining authority that detention is the only remedy available and that the petitioner is required to be immediately detained in order to prevent him from pursuing his illegal and anti-social activities is not genuine. To support his contention, he has drawn attention to paragraph 9 of the grounds of detention wherein there is a reference to Chapter Case No.19 of 2001 under Section 93 of the Bombay Prohibition Act, which is indicated as pending on the date of order of detention. The said Chapter Case was lodged on the 12th June, 2001. The order was passed on the 9th July, 2001 and, according to the learned advocate Mr. Gondaliya, no offence is indicated to have been committed by the petitioner after lodging of that Chapter Case. The immediate need for detention, therefore, cannot be said to be genuine.

3.1 The second ground that is indicated by learned advocate for the petitioner is that the statements of anonymous witnesses were verified on the 25th, 26th and the 27th June, 2001, whereas the order was passed on the 9th July, 2001. If there was genuine urgency and need for detaining the petitioner, the order would have been passed immediately. The satisfaction for the need for exercise of powers under Section 3 of the PASA Act for immediately preventing the petitioner from pursuing his illegal activities, therefore, cannot be said to be genuine. He, therefore, urged that the petition may be allowed.

4. Mr. Joshi, learned Assistant Government Pleader, has opposed this petition.

5. Having regard to rival side contentions, there

appears substance in the contention raised by Mr. Gondalia. The statements of anonymous witnesses were verified by the detaining authority on the 25th, 26th and the 27th June, 2001, respectively. After the 27th June, 2001, the detaining authority passed the order on the 9th July, 2001, i.e. nearly after 12 days. The satisfaction recorded by the authority for immediate action under PASA Act is required in order to immediately prevent the petitioner from pursuing his activities, therefore, cannot be said to be genuine. If the satisfaction was genuine, the order would have been passed soon after the verification of the statement on the 27th June, 29001.

5.1 Likewise, as rightly pointed out by the learned advocate for the petitioner, the detaining authority has observed that proceedings under Section 93 of Bombay Prohibition Act which were pending in Court are not sufficient to prevent the petitioner from pursuing his activities. There is no basis for making this observation whereas, in fact, no offence after the lodging of the said Chapter Case is registered and these undisputed facts indicate that the satisfaction of the detaining authority that preventive measures under ordinary law are not sufficient to prevent the petitioner from pursuing his activities is not genuine.

7. In view of the above discussion, the petition deserves to be allowed and the same is allowed. The impugned order of detention dated the 9th July, 2001, passed against the detenu is hereby quashed. The detenu-Sadarusing Kartarsing Sandhu is ordered to be set at liberty forthwith, if not required in any other matter. Rule is made absolute with no orders as to costs.

[A.L. DAVE, J.]

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